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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT BECERRA,

Defendant and Appellant.

B209134

(Los Angeles County
Super. Ct. No. KA034550)

APPEAL from an order of the Superior Court of Los Angeles County, Wade Olson, Judge. Appeal dismissed.

Julie Schumer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant Robert Becerra purports to appeal from a May 23, 2008 postjudgment order denying his restitution fine modification request purportedly filed pursuant to Penal Code section 1237. We dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In 1997, a jury convicted defendant of attempted murder and found true criminal street gang and firearm use enhancements.¹ On June 11, 1997, the trial court sentenced defendant to an aggregate state prison term of 28 years to life, and ordered him to pay a \$3,000 restitution fine (Pen. Code, § 1202.4, subd. (b)). Defendant appealed his conviction, and this court affirmed the judgment. (*People v. Becerra* (July 23, 1998, B113477) [nonpub. opn.].)

On May 16, 2008, defendant, in pro. per., filed a “motion and petition for modification of restitution” in the trial court to reduce the \$3000 restitution fine to \$200. Defendant claimed the \$3000 restitution fine was unauthorized because he was never informed he could contest the fine at the sentencing hearing, and the trial court failed to consider his ability to pay, apparently erroneously assuming instead he could pay the fine out of future prison wages. On May 23, 2008, the trial court summarily denied defendant’s request for a reduction of the restitution fine.

Defendant filed a notice of appeal.

¹ The underlying facts of the crime are not relevant.

DISCUSSION

We appointed counsel to represent defendant on appeal. After examining the record, counsel filed a request for an independent review of the record for arguable issues pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

On October 7, 2008, we advised defendant that he had 30 days within which to submit personally by brief or letter any grounds of appeal, contentions or arguments that he wanted us to consider. To date, we have received no response from defendant. We have examined the entire record and are satisfied that defendant's counsel has complied fully with her responsibilities. No arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

The May 23, 2008 order is nonappealable. (*People v. Cantrell* (1961) 197 Cal.App.2d 40, 43; *People v. Bowles* (1933) 135 Cal.App. 514, 516.) Even if we were to deem the restitution modification motion to have been a petition for writ of habeas corpus, the May 23, 2008 order is still not appealable. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7; *In re Hochberg* (1970) 2 Cal.3d 870, 876, disapproved on other grounds in *In re Fields* (1990) 51 Cal.3d 1063, 1070, fn. 3.) "Because no appeal lies from the denial of a petition for writ of habeas corpus, a prisoner whose petition has been denied by the superior court can obtain review of his claims only by the filing of a new petition in the Court of Appeal." (See *In re Clark, supra*, 5 Cal.4th at p. 767, fn. 7.)

DISPOSITION

The appeal is dismissed.

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JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.